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VIA ECF

September 22, 2009

The Honorable Sue L. Robinson
United States District Court
for the District of Delaware
844 King Street
Wilmington, DE 19801



ATLANTA

AUSTIN

BOSTON

DALLAS

DELAWARE

MUNICH

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Re: *Callaway Golf Company v. Acushnet Company*
USDC-D. Del. - C. A. No. 06-91 (SLR)

Dear Judge Robinson:

This letter responds¹ to Acushnet's September 18, 2009, letter regarding the scheduling of a retrial in this matter.

Citing a "three week trial" scheduled to begin in front of Judge Folsom in the Eastern District of Texas on March 3, 2010, Acushnet argues that its new lead counsel has a conflict with the proposed three-week window of time, from March 15th to April 2nd, during which this Court proposed to fit in the retrial of this case. But Acushnet's counsel previously advised Judge Folsom that the trial in Texas could be completed within 10 days – not three weeks. *See* Exh. A at 3. The plaintiff in the Texas case suggested the trial be completed within 5 days. *Id.* Given Judge Folsom's emphasis on completing trials in an expeditious manner, our own experience in that court, and the plaintiff's and Mr. Bunsow's competing trial estimates for that case, if the trial occurs in March at all it would likely be completed by March 12th. If so, no possible conflict would occur with the retrial in this matter.

More fundamentally, it appears the trial cited by Acushnet's counsel is not even likely to occur in March 2010. Judge Folsom already has 3 trials scheduled to begin on March 1st or 2nd, and each of those cases is older than, and hence has priority over, the case cited by Acushnet's counsel. *See* Exhs. B-D.²

¹ Although Acushnet's letter states that Acushnet had not "received a response to our request that they join in this rescheduling request," prior to submitting its letter Acushnet did not ask Callaway Golf to join in such a request, or even notify Callaway Golf that it was preparing a letter to send to the Court. The day before its letter to the Court, Acushnet simply sent an email concerning the alleged conflict.

² One of the cases with priority over the matter cited by Acushnet's counsel, *Data Treasury*, is a large, complex case that may require multiple trials during the month of

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Lastly, Acushnet's new lead counsel is from the same firm as its prior lead counsel – Howrey LLP. It does not seem to Callaway Golf that Acushnet should be able to delay this matter by invoking a mere potential conflict for an additional lawyer from the same firm that originally tried this case. As the Court is aware, each day Acushnet can push this matter back adds to the cumulative delay and increases the risk that Acushnet's co-pending reexaminations, filed in breach of contract, could win "the race" to final decision. Callaway Golf recognizes that the Court's schedule is very heavily booked, appreciates the effort to fit in a retrial of this matter, and is prepared to do whatever is necessary to have this matter promptly resolved.

Callaway Golf, therefore, respectfully requests that the Court maintain its approach of fitting in the retrial of this matter during the three-week window of March 15th to April 2nd. Of course, if the Court has had an earlier slot open up, that could obviate the present scheduling issue entirely.

Respectfully,

/s/ Thomas L. Halkowski

Thomas L. Halkowski

TLH:jrm

Enclosure

cc: Clerk of Court (via hand delivery)
Counsel of Record (via ECF)

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March. *See* Exh. B at 6 (court reserving decision "whether all Defendants will proceed to trial collectively or in specified groupings as well as the scope of the trial(s)").